

CONTRACT NUMBER: _

BETWEEN

MONTANA DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES

AND

—

FOR

—

EFFECTIVE: __ through __

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CONTRACT FROM THE MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

CONTRACT NUMBER ____

1. PARTIES

This Contract is entered into by and between the Montana Department of Public Health and Human Services, _____, (hereinafter referred to as the "Department"), whose address and phone number are 111 Sanders, _____, Helena, Montana 59604, _____, and _____, (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number, mailing address, phone number and fax number are: ___, Phone: ___, Fax: ___.

THE PARTIES AGREE AS FOLLOWS:

2. TRIBAL SOVEREIGNTY

For the purposes of this contract, the Tribe expressly waives its sovereign immunity from suit for the sole purposes of enforcement of the contract by the Department and recovery of damages for breach of the terms of the contract, including improperly accrued, spent or disbursed funds or property provided to the Tribe pursuant to this contract. The Parties to this contract, however, agree that no word, phrase, sentence, paragraph or section, in whole or part, separate or together, contained in this contract may be interpreted, other than as expressly provided in this provision, as an express or implied waiver generally of the sovereign immunity of the Tribe.

3. PURPOSE

The purpose of this contract is to **INSERT HERE A BRIEF DESCRIPTION OF THE PURPOSES OF THE CONTRACT.**

For purposes of auditing procedures, the CFDA Number for this program is _____.

4. TERM OF CONTRACT

THIS SECTION IS TO BE USED WHEN THERE IS NO DESIRE TO HAVE THE POSSIBILITY OF EXTENSION.

- A. The term of this contract for the purpose of delivery of services is from _ through __, unless terminated otherwise in accordance with the provisions of this contract. This contract is a one-time contract and therefore may not be extended for any period beyond that specified above.

OR THIS SECTION IS TO BE USED WHEN IT MAY BE DESIRABLE TO EXTEND A CONTRACT AT THE END OF THE INITIAL TERM.

- B. The term of this contract for the purpose of delivery of services is from _ through _, unless terminated otherwise in accordance with the provisions of this contract. This contract may be extended for _ if the parties agree to the extension prior to the end of the current term of this contract.
- C. The completion date of performance for purposes of issuance of final payment for services is the date upon which the Contractor submits to the Department such final reports as are required under this contract and are satisfactory in form and content as determined by the Department.
- D. The Contractor, after termination of this contract, remains subject to and obligated to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities that may arise under the contract including, but not limited to, record retention, audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals and property ownership and use.

5. SERVICES TO BE PROVIDED

THIS SECTION IS TO BE USED WHEN THE DESCRIPTION OF SERVICES TO BE PROVIDED IS TO APPEAR ENTIRELY IN THIS PROVISION.

The Contractor must provide the following services:

OR THIS SECTION IS TO BE USED WHEN THERE ARE ONE OR MORE ATTACHMENTS FOR THE PURPOSE OF DESCRIBING THE SERVICES TO BE PROVIDED AND MUST BE SPECIFICALLY DESIGNATED HERE AND MUST ALSO BE INCORPORATED BY REFERENCE IN THE SCOPE, AMENDMENT AND INTERPRETATION SECTION.

The Contractor must provide the following services as more fully described in Attachment A to this contract, which is hereby incorporated into this contract by reference herein.

6. CONSIDERATION AND PAYMENTS

THIS SECTION IS TO BE USED WHEN THE CONSIDERATION AND PAYMENT SCHEDULE ARE SIMPLE WITHOUT REFERENCE TO FEES OR COST BASED REIMBURSEMENT.

- A. In consideration of the services provided through this contract, the Contractor is to receive reimbursement from the Department for services rendered as follows:

OR THIS SECTION TO BE USED WHEN CONSIDERATION IS PREDICATED ON A BUDGET THAT IS SIMPLE ENOUGH TO PRESENT IN THIS PROVISION.

- A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with those costs provided for in the following budget. The Contractor may only bill for services that have been performed.

OR THIS SECTION IS TO BE USED WHEN CONSIDERATION IS PREDICATED ON A BUDGET THAT IS TOO DETAILED TO PRESENT IN THE CONTRACT OR THAT WILL BE REVISED ON AN ANNUAL OR OTHER PERIODIC BASIS. THE ATTACHMENT SHOULD BE SPECIFICALLY DESIGNATED HERE AND INCORPORATED BY REFERENCE IN THE SCOPE, AMENDMENT AND INTERPRETATION SECTION.

- A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with those costs provided for in the budget in Attachment __. The Contractor may only bill for services that have been performed.

OR THIS SECTION IS TO BE USED WHEN CONSIDERATION IS BASED ON A FEE SCHEDULE AND THE FEE SCHEDULE IS SIMPLE ENOUGH TO BE PRESENTED IN THE CONTRACT.

- A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with the following reimbursement fees. The Contractor may only bill for services that have been performed.

OR THIS SECTION TO BE USED WHEN CONSIDERATION IS BASED ON A FEE SCHEDULE AND THE FEE SCHEDULE IS SIMPLE ENOUGH TO BE PRESENTED IN THE CONTRACT.

THE ATTACHMENT SHOULD BE SPECIFICALLY DESIGNATED HERE AND INCORPORATED BY REFERENCE IN THE SCOPE, AMENDMENT AND INTERPRETATION SECTION. IF A FEE SCHEDULE IS ADOPTED IN RULE, THE RULE SHOULD BE EXPLICITLY REFERENCED IN THIS SECTION.

- A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with those reimbursement fees provided for in the fee schedule provided for in Attachment __. The Contractor may only bill for services that have been performed.

OR THIS SECTION IS TO BE USED WHEN CONSIDERATION IS BASED ON A FEE SCHEDULE ADOPTED IN RULE.

- A. In consideration of the services to be provided through this contract, the Contractor is to receive from the Department reimbursement for services rendered in accordance with those reimbursement fees adopted in rule at ARM insert citation. The Contractor may only bill for services that have been performed.

OR THIS SECTION IS TO BE USED WHEN THE CONTRACT IS SIMPLE WITH NO BUDGET OR OTHER SIMILAR BASIS FOR DETERMINING EXPENDITURES.

- A. The Contractor must submit invoices for reimbursement on forms provided by the Department. Invoices must be submitted to the Department in accordance with the following schedule: Insert schedule.

OR THIS SECTION TO BE USED WHEN THE EXPENDITURES UNDER THE CONTRACT ARE BUDGET OR COST BASED OR REQUIRE OTHER SIMILAR ACCOUNTABILITY.

- A. The Contractor must submit invoices itemizing all services and expenses for reimbursement on forms provided by the Department. Invoices must be submitted to the Department in accordance with the following schedule: Insert schedule.
- A. The Department may withhold payment at any time during the term of the contract, if the Contractor is failing to perform its duties and responsibilities in accordance with the terms of this contract.

OR THIS SECTION MAY BE USED WHEN IT IS DESIRABLE TO PROVIDE FURTHER ASSURANCE OF FULL PERFORMANCE. A CERTAIN SUM OR PERCENT OF THE CONSIDERATION IS TO BE HELD BY THE DEPARTMENT UNTIL COMPLETION OF PERFORMANCE SHOULD BE SPECIFIED. FOR EXAMPLE, 10% OF THE CONSIDERATION COULD BE HELD PENDING COMPLETION OF PERFORMANCE. THAT CONDITION COULD BE USED IN LIEU OF A PENALTY SECTION IN THE "PENALTIES" PROVISION OR COULD BE USED IN CONJUNCTION WITH THE "PENALTIES" PROVISION. IF IT IS USED IN CONJUNCTION WITH THE PENALTIES PROVISION, THE PROVISIONS SHOULD BE COORDINATED IN TEXT. IF THIS PROVISION IS USED, THE BILLING AND OTHER PROVISIONS MAY NEED TO BE MODIFIED TO REFLECT THE FINAL PAYMENT.

- A. In order to assure full performance by the Contractor of the duties and responsibilities of this contract, the Department is withholding insert amount or percent of the consideration from payment until such time as the Department determines that the Contractor has satisfactorily performed all the duties and responsibilities of this contract. The Department may retain the above stated

amount if the Contractor fails to complete full performance. The exercise of the Department's right in relation to this provision does not preclude the Department from recovery of additional amounts that are owing to it.

OR THIS SECTION IS TO BE USED WHEN THE EXPENDITURES UNDER THE CONTRACT ARE BUDGET OR COST BASED OR REQUIRE OTHER SIMILAR ACCOUNTABILITY.

- A. The consideration provided to the Contractor under this contract may be adjusted by the Department in its discretion based on audit findings.

THE PRESENTATION OF THIS INFORMATION IS A REQUIREMENT OF FEDERAL LAW. THIS SUBSECTION NEED NOT BE USED IF THE NECESSARY INFORMATION APPEARS OTHERWISE IN THE CONTRACT OR ATTACHED BUDGET SHEETS.

- A. The sources of the funding for this contract are insert amount from the state general fund and, for the balance, federal grants from the state the federal agencies from which funds are obtained (for example, the U.S. Department of Health and Human Services) and the federal grant numbers.

OR THIS SECTION IS TO BE USED WHEN THERE IS A TOTAL LIMITATION ON CONSIDERATION.

- A. The total reimbursement provided to the Contractor for the purposes of this contract may not exceed insert total amount.
- B. The Contractor may not receive monies provided through this contract as reimbursement for the costs of services that are reimbursed from other sources.

7. RELATED PARTY TRANSACTIONS

THIS PROVISION IS TO BE USED IN ALL COST BASED CONTRACTS.

The Contractor may not enter into any contract or other arrangement for the use, purchase, sale, lease or rental of real property, personal property or services funded with monies of this contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result.

The Department may grant exceptions to this prohibition where it determines that the particular circumstances warrant the granting of an exception.

8. CREATION AND RETENTION OF RECORDS

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

- A. The Contractor must create and maintain records of the services covered by this contract, including financial records, supporting documents and such other records as are required by law or other authority.
- B. Records must be retained for a period of three (3) years from the completion date of this contract. If any litigation, review, claim or audit is started before the expiration of the three year period, the records must be retained until all litigation, reviews, claims or audit findings involving the records have been resolved.

THE RETENTION OF RECORDS FOR A THREE-YEAR PERIOD FOLLOWING THE TERMINATION OF THE CONTRACT IS A GENERAL FEDERAL REQUIREMENT. SOME FEDERAL PROGRAMS MAY IMPOSE A LONGER RETENTION PERIOD. IF THAT IS THE CASE, THE CONTRACT RETENTION PERIOD MUST BE ADJUSTED.

- B. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices.

THIS SECTION IS TO BE USED IN ALL HUMAN SERVICES CONTRACTS.

- C. Records developed for the purposes of delivery of services to recipients under this contract are the property of the Department and must be developed, maintained and disposed of as provided in this contract or as otherwise directed by the Department.

9. ACCOUNTING, COST PRINCIPLES AND AUDIT

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

SINCE THE ACCOUNTING, COST PRINCIPLES AND AUDIT REQUIREMENTS CAN VARY SIGNIFICANTLY DUE TO FEDERAL REQUIREMENTS AND FOR PROGRAMMATIC PURPOSES, IT MAY BE NECESSARY IN SOME CIRCUMSTANCES TO CRAFT OTHER VERSIONS FOR SOME OF THESE SECTIONS. SINCE MANY OF THE REQUIREMENTS IN THESE SECTIONS ARE EXPRESSLY ESTABLISHED IN LAW, ALTERNATIVE OR ADDITIONAL SECTIONS ADDED TO THIS SECTION FOR PROGRAMMATIC PURPOSES SHOULD BE CAREFULLY REVIEWED TO ASSURE THAT THERE ARE NO CONFLICTS WITH THE LEGAL REQUIREMENTS.

- A. The Contractor, in accordance with Mont. Code Ann. § 18-4-311 (2002), and other authorities, must maintain for the purposes of this contract an accounting system of procedures and practices that conforms to Generally Accepted

Accounting Principles (GAAP), as interpreted by the Department and to any other accounting requirements the Department may require.

- B. The Department or any other legally authorized governmental entity or their authorized agents may at any time during or after the term of this contract conduct, in accordance with Mont. Code Ann. § 5-13-304 and 18-1-118 (2002), and other authorities, audits for the purposes of assuring the appropriate administration and expenditure of the monies provided to the Contractor through this contract and assuring the appropriate administration and delivery of services provided through this contract.
- C. The Contractor, for purposes of audit and other administrative activities, in accordance with Mont. Code Ann. § 18-1-118 (2002), and other authorities, must provide the Department and any other legally authorized governmental entity or their authorized agents access at any time to all the Contractor's records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this contract until the expiration of three (3) years from the completion date of this contract.

The State and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.

SUBSECTION D IS TO BE USED WHEN THE FUNDING FOR THE CONTRACT INCLUDES FEDERAL MONIES.

SINCE THE FEDERAL REQUIREMENTS PROVIDE CERTAIN SPECIFIED SETS OF AUDIT REQUIREMENTS APPLICABLE TO DIFFERING CIRCUMSTANCES, SEVERAL ALTERNATIVE VERSIONS OF THE AUDIT REQUIREMENTS SECTION ARE PRESENTED.

- D. The Contractor, if receiving \$500,000 or more in federal funds from any and all federal funding sources, must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of OMB Circular "A-122, Cost Principles for Non-Profit Institutions" concerning the use of the funds provided under this contract.

Alternative for post-secondary educational institutions.

- D. The Contractor must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of OMB Circular "A-21, Cost Principles for Educational Institutions" concerning the use of the funds provided under this contract.

Alternative for state or local governments and federally recognized tribes.

- D. The Contractor must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of OMB Circular "A-87 Cost Principles for State and Local Governments and Indian Tribal Governments" concerning the use of the funds provided under this contract.

Alternative for hospitals.

- D. The Contractor must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the provisions of 45 CFR 74, Appendix E, "Cost Principles for Hospitals" concerning the use of the funds provided under this contract.

Alternative for "for-profit" entities.

- D. The Contractor must comply with the accounting and audit requirements in 45 CFR 74.26(d) and the cost principles and procedures for commercial organizations in 48 CFR 31.2 concerning the use of the funds provided under this contract in the version in effect on the date this contract is signed by both parties. Pursuant to 45 CFR 74.26(d), a "for-profit" organization may either have an audit conducted in accordance with the Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or the Government Auditing Standards.
- E. The Contractor must reimburse the Department or compensate the Department in any other manner as the Department may direct for any sums of monies determined by an audit to be owing to the Department.

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

THIS PROVISION IS TO BE USED IN ALL CONTRACTS. (Note: if the Contractor wants to subcontract to provide any services connected with this contract, Contractor must get Department approval).

- A. The Contractor may not assign, transfer, delegate or subcontract, in whole or part, this contract or any right or duty arising under this contract unless the Department in writing approves the assignment, transfer, delegation or subcontract.
- B. An assignment, transfer, delegation or subcontract entered into by the Contractor must be in writing, must be subject to the terms and conditions of this contract, and must contain any further conditions as may be required by the Department.

- C. The Department's approval of any assignment, transfer, delegation or subcontract neither makes the Department a party to that agreement nor creates any right, claim or interest in favor of any party to that agreement against the Department.
- D. The Contractor must immediately notify the Department of any litigation concerning any assignment, transfer, delegation or subcontract.
- E. The Contractor must indemnify and hold the Department harmless, in accordance with the provisions of this contract regarding indemnification, with respect to any suit or action by any party to an assignment, transfer, delegation or subcontract.

11. INDEMNIFICATION

THIS PROVISION IS TO BE USED IN ALL CONTRACTS EXCEPT FOR CONTRACTS FOR SERVICES TO BE DELIVERED BY THE UNIVERSITY SYSTEM OR ANOTHER STATE DEPARTMENT, SUCH AS THE DEPARTMENT OF LABOR.

- A. The Contractor must indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this contract by the Contractor, from any matters arising from the performance of this contract, or from the Contractor's failure to comply with any federal, state, and local laws, regulations, and ordinances applicable to the services or work to be provided under this contract.
- B. This indemnification applies to all claims, obligations, liabilities, costs, attorney's fees, losses or suits resulting from any acts, errors, omissions or negligence, whether willful or not, of the Contractor, its employees, agents, subcontractors, or assignees and any other person, firm, or corporation performing work, services, or providing materials under this contract.

12. INSURANCE COVERAGE

THIS PROVISION IS TO BE USED IN ALL CONTRACTS EXCEPT FOR CONTRACTS FOR SERVICES TO BE DELIVERED BY THE UNIVERSITY SYSTEM OR ANOTHER STATE DEPARTMENT, SUCH AS THE DEPARTMENT OF LABOR, OR WHEN THE RISK MANAGEMENT PROGRAM OF THE DEPARTMENT OF ADMINISTRATION HAS SPECIFICALLY AGREED TO COVERAGE UNDER THE STATE SELF-INSURANCE PLAN FOR THE ACTIVITIES BEING PERFORMED THROUGH THE CONTRACT. THE INSURANCE REQUIREMENTS ARE APPLICABLE TO ALL OTHER CONTRACTS, INCLUDING CONTRACTS WITH LOCAL GOVERNMENTS.

SOME TRIBES MAY NOT HAVE INSURANCE COVERAGE. IF THAT IS THE SITUATION, THE STANDARD INSURANCE COVERAGE SECTION FROM THE DEPARTMENT'S POLICY ON STANDARD CONTRACTUAL TERMS NEED NOT BE INCORPORATED INTO THE CONTRACT.

A. GENERAL LIABILITY INSURANCE

1. The Contractor must maintain, at its cost, primary standard general liability insurance coverage. The general liability coverage must include claims arising out of contractual liability, the delivery of services, omissions in the delivery of services, injuries to persons, damages to property, the provision of goods or rights to intellectual property or any other liabilities, which may arise in the provision of services under this contract. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, employees, representatives, assigns or subcontractors.

THE RECOMMENDED HIGH RISK COVERAGE FOR GENERAL LIABILITY INSURANCE IS \$1,000,000 PER CLAIM AND \$2,000,000 AGGREGATE PER YEAR. THE MODERATE RISK ALLOWABLE COVERAGE IS \$500,000 PER CLAIM AND \$1,000,000 AGGREGATE PER YEAR AND THE LOW RISK PER CLAIM IS \$300,000 PER CLAIM AND \$600,000 AGGREGATE PER YEAR. VARIATIONS MAY BE APPROVED BY LEGAL FOR A CLASS OF CONTRACTS OR FOR DISTINCTIVE INDIVIDUAL CONTRACTS. VARIATION BASED ON INDIVIDUAL CONTRACTS WITHIN A CLASS OF CONTRACTS IS NOT ALLOWED.

2. The Contractor must provide general liability insurance coverage inclusive of bodily injury, personal injury and property damage. The general liability insurance coverage must be obtained with combined single limits of \$state amount per occurrence and \$state amount aggregate per year, from an insurer with a Best's Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.
3. The state, its officers, officials, agents, employees, and volunteers, are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the insured's general supervision of the Contractor, products and completed operations; and arising in relation to the premises owned, leased, occupied or used by the Contractor.

B. AUTOMOBILE LIABILITY INSURANCE

AUTOMOBILE INSURANCE COVERAGE IS TO BE USED WHEN THE CONTRACT PROVIDES THAT THE CONTRACTOR IS TO TRANSPORT CLIENTS OR WHEN THE TRANSPORTATION OF CLIENTS MAY OCCUR AS AN ACTIVITY RELATED TO THE DELIVERY OF SERVICES. THIS SECTION MUST ALSO BE USED WHEN

THE DELIVERY OF SERVICES NECESSITATES TRAVEL BY EMPLOYEES OF THE CONTRACTOR.

1. The Contractor must maintain, at its cost, automobile liability insurance coverage. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, employees, representatives, assigns or subcontractors.

THE RECOMMENDED AND MINIMUM COVERAGES ARE THE SAME AMOUNTS IDENTIFIED FOR GENERAL LIABILITY INSURANCE (SEE ABOVE).

2. The Contractor must provide automobile liability insurance inclusive of bodily injury, personal injury and property damage. The automobile liability insurance coverage must be obtained with combined single limits of \$state amount per occurrence and \$state amount aggregate per year, from an insurer with a Best's Rating of no less than A- or through a qualified self-insurer plan, implemented in accordance with Montana law and subject to the approval of the Department.
3. The state, its officers, officials, agents, employees, and volunteers, are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Contractor, inclusive of the Contractor's general supervision, or arising in relation to automobiles leased, hired, or borrowed by the Contractor.

C. PROFESSIONAL LIABILITY INSURANCE

PROFESSIONAL LIABILITY INSURANCE IS TO BE USED WHEN THE CONTRACT IS FOR THE SERVICES OF A RECOGNIZED MEDICAL OR OTHER PROFESSIONAL SUCH AS A PHYSICIAN, PSYCHOLOGIST, OR LICENSED PROFESSIONAL COUNSELOR. THIS COVERAGE IS NOT REQUIRED FOR DIRECT CARE STAFF WHO ARE NOT SUBJECT TO LICENSURE AS PROFESSIONALS AND FOR WHOM PROFESSIONAL LIABILITY IS NOT AVAILABLE.

1. The Contractor must maintain, at its cost, professional liability insurance coverage against claims for harm to persons, which may arise from the professional services provided through this contract. The insurance must cover claims as may be caused by any act, omission, or negligence of the Contractor and/or its officers, agents, employees, representatives, assigns or subcontractors, assigns or employees.

THE RECOMMENDED AND MINIMUM COVERAGES ARE THE SAME AMOUNTS IDENTIFIED FOR GENERAL LIABILITY INSURANCE (SEE ABOVE).

2. The Contractor must provide occurrence coverage professional liability insurance with combined single limits of \$state amount per occurrence

and **\$state amount** aggregate per year, from an insurer with a Best's Rating of no less than A-.

3. In lieu of occurrence coverage, the Contractor may provide claims made coverage with three years of additional tail coverage at the discretion of the Department and with prior approval of the Risk Management and Tort Defense Division of the Department of Administration.

D. GENERAL REQUIREMENTS

THE FOLLOWING GENERAL SECTIONS ARE TO BE USED IN CONTRACTS WHERE ANY TYPE OF INSURANCE COVERAGE IS REQUIRED.

1. The Contractor must provide to the Department a copy of the certificate of insurance showing compliance with the requisite coverage. All insurance required under this contract must remain in effect for the entire contract period. The Contractor must provide to the Department copies of any new certificate or of any revisions to the existing certificate issued during the term of this contract.
2. The Department may require the Contractor to provide copies of any insurance policies pertinent to these requirements, any endorsements to those policies and any subsequent modifications of those policies.
3. The Contractor's insurance coverage is the primary insurance in respect to the state, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the state and its officers, officials, agents, employees and volunteers is in excess of the Contractor's insurance and does not contribute with it.
4. Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, the insurer must:
 - a. reduce or eliminate such deductibles or self-insured retentions in relation to the state, its officials, employees and volunteers; or
 - b. Contractor must procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

13. COMPLIANCE WITH LABOR LAWS

THIS PROVISION IS TO BE USED IN ALL CONTRACTS -- IF A TRIBE, USE PROVISIONS BELOW. (Note: to obtain exemption, call 444-1446).

- A. The Contractor assures the Department that the Contractor is an independent contractor providing services for the Department and that neither the Contractor nor any of the Contractor's employees are employees of the Department under this contract or any subsequent amendment.
- B. The Contractor, at all times during the term of this contract, must maintain coverage for the Contractor and the Contractor's employees through workers' compensation, occupational disease, and any similar or related statutorily required insurance program. The Contractor must provide the Department with proof of necessary insurance coverage.
- C. If the Contractor has received, for workers' compensation purposes, an independent contractor exemption as to the Contractor, the Contractor must provide the Department with a copy of the exemption.
- D. The Contractor is solely responsible for and must meet all labor, health, safety and other legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts which may be legally required with respect to the Contractor and any persons providing services on behalf of the Contractor under this contract.
- E. The provision of this contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this contract is an employee of the Department.

TRIBAL

- A. The Contractor assures the Department that the Contractor is an independent contractor providing services for the Department and that neither the Contractor nor any of the Contractor's employees are employees of the Department under this contract or any subsequent amendment.
- B. Pursuant to the exemption for tribal employment provided in Mont. Code Ann. § 39-71-401(2)(m)(2002), the Contractor is not required to maintain workers' compensation or occupational disease coverage for either the Contractor or the Contractor's employees otherwise required by Montana law. The Contractor may voluntarily elect to participate in the state workers' compensation and occupational disease programs. If the Contractor does not maintain workers' compensation, the Contractor is solely liable for any and all injuries or harm suffered by the Contractor's employees, inclusive of employees in fact. The Contractor indemnifies the Department for any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from the Contractor's failure to maintain workers' compensation or occupational disease coverage.
- C. The Contractor is solely responsible for and must meet all labor, health, safety and other legal requirements, including payment of all applicable taxes,

premiums, deductions, withholdings, overtime and other amounts which may be legally required with respect to the Contractor and any persons providing services on behalf of the Contractor under this contract.

- D. The provision of this contract regarding indemnification applies with respect to any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from the Contractor's failure to comply with this section, or from any finding by any legal authority that any person providing services on behalf of the Contractor under this contract is an employee of the Department.

14. COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

The Contractor must comply with all applicable federal and state laws, executive orders, regulations and written policies, including those pertaining to licensing.

15. FEDERAL REQUIREMENTS

THIS PROVISION IS TO BE USED WHEN THE FUNDING FOR THE CONTRACT INCLUDES FEDERAL MONIES. FOR TRIBES, SEE OTHER A.1.

A. Generally

- 1. The Contractor, in addition to the federal requirements specified in this contract and any attachments to this contract, must comply with the applicable federal requirements and assurances for recipients of federal grants provided in the Federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", and in the Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (6-99)". Variable -- Copies of the forms are included herein as Appendix A. Those assurance documents must be signed by the Contractor and submitted to the Department with or prior to the signing of this contract.

TRIBAL

- 1. To the extent applicable to federally recognized sovereign Indian tribes, the Contractor must comply with the federal requirements specified in this contract and any attachments to this contract, and with the applicable federal requirements and assurances for recipients of federal grants provided in the Federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", and in the

Department's "CERTIFICATION OF COMPLIANCE WITH CERTAIN REQUIREMENTS FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES (6-99)". Variable -- Copies of the forms are included herein as Appendix A. Those assurance documents must be signed by the Contractor and submitted to the Department with or prior to the signing of this contract.

**Leave in
All**

The OMB Form referenced above may be obtained through the website for the Office of Management of the Budget at WWW.WHITEHOUSE.GOV/OMB. At that website, click on "Grants Management" to access the page wherein the circulars may be called up and obtained by printing. The Department form referenced above may be obtained from the contract liaison.

The Contractor is responsible for determining which requirements and assurances are applicable to the Contractor.

2. The Contractor must ensure compliance of its subcontractors with the applicable federal requirements and assurances.

B. Political and Lobbying Activities

1. Federal monies received by the Contractor under the terms of this contract may not be used for any political activities by the Contractor, its employees or agents except as expressly permitted by state and federal law.
2. As required by 31 U.S.C. 1352 and 45 CFR 93.100 et seq., federally appropriated monies may not be used to influence or attempt to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress, in connection with the awarding of any federal contract, grant or loan, the making of any cooperative agreement or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
3. If any funds other than federally appropriated funds are paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress or an employee of a member of the U.S. Congress in connection with this contract, the Contractor must complete and submit to the Department the federally required form, "STANDARD FORM LLL", variable -- which is hereby included in Appendix A.
4. Federally appropriated monies received through the programs of the Federal Departments of Health & Human Services, Education or Labor, as provided in Section 503 of H.R. 3424, appropriating monies for the

Departments of Labor, Health and Human Services, and Education, as enacted through Division B of H.R. 3194, "The Consolidated Appropriations Act of 1999", Pub. L. No. 106-113, and as may be provided by congressional continuing resolutions or further budgetary enactments, may not be used:

- a. to fund publicity or propaganda, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or a state legislature, except for presentations to the U.S. Congress or a state legislative body or one or more of its members as an aspect of normal and recognized executive-legislative relationships.
 - b. to pay the salary or expenses of any grant or contract recipient, or agent acting for the recipient, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or a state or local legislative body.
- 5. The Contractor must cooperate with any investigation undertaken regarding the expenditure of funds for political or lobbying activities.
 - 6. The Contractor must ensure the compliance of any subcontractors with these restrictions and any related reporting requirements.

SOME FEDERAL PROGRAMS HAVE SPECIFIC STATUTORY AUTHORITIES THAT ALLOW RECIPIENTS OF MONIES TO EXPEND THE MONIES IN SUPPORT OF CERTAIN POLITICAL AND LOBBYING ACTIVITIES THAT WOULD OTHERWISE BE PROHIBITED. WHEN THERE ARE SUCH PROGRAM SPECIFIC AUTHORITIES, ADDITIONAL SECTIONS SHOULD BE INCORPORATED INTO THIS SECTION DENOTING THE AUTHORITIES AND THE ACTIVITIES THAT ARE PERMISSIBLE UNDER THOSE AUTHORITIES.

THE FOLLOWING ITEM #7 IS TO BE USED IN CONTRACTS THAT PROVIDE FOR THE EXPENDITURE OF FEDERAL MONIES FOR THE AGED THROUGH TITLE III OF THE OLDER AMERICANS ACT.

- 7. Federal monies received through Title III of the Older Americans Act for services to the aged, in accordance with 42 U.S.C. §3026, may be used for the following activities:
 - a. providing voters and prospective voters with transportation to polling places and voter registration sites;
 - b. providing assistance in voter registration;
 - c. providing registration and voting assistance that does not influence voter choice; and

- d. advocating in the community for the elderly by monitoring, evaluating and commenting upon policies, programs, hearings, levies and community actions affecting the elderly.

C. Federal Debarment Prohibition

1. The Department, in accordance with The Federal Acquisition Streamlining Act of 1994, P.L. 103-355, and Executive Orders #12549 and #12689, is prohibited from contracting with any entity that is debarred, suspended, or otherwise excluded from participating in procurement activities funded with federal monies. This prohibition also extends to contracting with an entity that has a director, officer, partner, person with beneficial ownership of more than 5 percent of the entity's equity, employee, consultant, or person otherwise providing items and services that are significant and material to the entity's obligations under its contract with the Department if that person has been debarred, suspended or otherwise excluded from participating in procurement activities funded with federal monies.
2. If the Department finds that the Contractor is not in compliance with subsection (1), the Department;
 - a. must notify the federal government;
 - b. may continue this contract unless the Secretary of the Federal Department of Health and Human Services directs otherwise; and
 - c. may only renew or otherwise extend the duration of the existing contract with the Contractor if the Federal Government provides to the Department and to Congress a written statement describing compelling reasons that exist for renewing or extending this contract.

16 CIVIL RIGHTS

THIS PROVISION IS TO BE USED IN ALL CONTRACTS -- IF A TRIBE, SEE TRIBAL A - C.

A. Federal and State Authorities

The Contractor must comply with the applicable provisions of the Montana Human Rights Act (Mont. Code Ann. § 49-2-101 (2002), et seq.), Governmental Code of Fair Practices (Mont. Code Ann. § 49-3-101 (2002), et seq.) the Federal Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), the Federal Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794), and the Federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.).

B. Discrimination

The Contractor, as provided at Mont. Code Ann. § 49-3-207 (2002), and other relevant authorities, may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

C. Employment

The Contractor, as provided at Mont. Code Ann. § 49-3-207 (2002), must hire persons on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

The Contractor, in accordance with Federal Executive Orders 11246 and 11375 and 41 CFR Part 60, must provide for equal employment opportunities in its employment practices.

Tribal A. All Tribes

A. Federal and State Authorities

To the extent applicable to federally recognized sovereign Indian tribes, the Contractor must comply with the applicable provisions of the Federal Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), the Federal Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794), and the Federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.).

Tribal B. All Tribes

B. Discrimination

To the extent applicable to federally recognized sovereign Indian tribes, the Contractor, as provided at Mont. Code Ann. § 49-3-207 (2002), and other relevant authorities, may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

Tribal C. All tribes

C. Employment

The Contractor must hire persons on the basis of merit and qualifications directly related to the requirements of the particular position being filled.

To the extent applicable to federally recognized sovereign Indian tribes, the Contractor, in accordance with Federal Executive Orders 11246 and 11375 and

41 CFR Part 60, must provide for equal employment opportunities in its employment practices.

To the extent permissible under federal law, the Tribe may employ tribal and Indian hiring preferences in employment of staff. For purpose of the tribal hiring preference, "tribal" is an enrolled member of the Tribe. An "Indian" for purpose of the administration of hiring preferences is any enrolled member of a federally recognized tribe.

THIS SECTION IS TO BE USED IN CONTRACTS THAT PROVIDE FOR THE EXPENDITURE OF MONIES RECEIVED FROM THE U.S. DEPARTMENT OF AGRICULTURE. THIS INCLUDES CONTRACTS SUCH AS COMMODITIES DISTRIBUTION CONTRACTS WHERE THE CONTRACTOR MAY RECEIVE FEDERAL GOODS RATHER THAN FUNDS.

D. USDA Non-Discrimination Requirements

In accordance with federal law and U.S. Department of Agriculture policy, the following provision governs expenditures of monies received from that Department:

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at: (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call: (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

17. CONFIDENTIALITY AND HIPAA REQUIREMENTS

THIS PROVISION IS TO BE USED IN ANY CONTRACTS FOR HUMAN SERVICES OR OTHER CONTRACTS THAT NECESSITATE ACCESS TO AND USE OF CONFIDENTIAL PERSONAL INFORMATION.

- A. The Contractor must, during and after the term of this contract, protect confidential consumer and recipient information obtained and used in the performance of contractual duties and responsibilities under this contract in accordance with applicable legal and policy authorities.

- B. All material and information containing consumer and recipient personal information provided to the Contractor by the Department or acquired by the Contractor on behalf of the Department, whether verbal, written, magnetic media, or in other forms, is to be regarded as confidential information and may only be used or disseminated by the Contractor, its subcontractors, or agents for the purposes allowed for under this Contract and any governing legal and policy authorities.
- C. The Contractor, in relation to individually identifiable health information, must comply with the privacy requirement of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the regulations implementing that requirement at 45 CFR Part 160 and Subparts A and E of Part 164 as they may be applicable to the Contractor and the services provided through this Contract. Appendix A to this contract provides information as to where the Contractor may access the relevant HIPAA legal authorities and the interpretative direction provided by the federal government. The Department's Certification Form signed by the Contractor and incorporated as an attachment to this Contract provides for the Contractor's certification of its determination as to whether it is legally subject to the HIPAA privacy requirements and, if subject to the HIPAA, certification of its determination that it is fully in compliance with HIPAA.
- D. The Contractor must notify the Department in writing within 5 work days in the event that: 1) a complaint is lodged with the Office of Civil Rights (OCR) of the Department of Health and Human Services alleging it determines that the Contractor is not in compliance with HIPAA; 2) the Office of Civil Rights (OCR) of the Department of Health and Human Services determines that the Contractor is not in compliance with HIPAA; or 3) an administrative action or litigation is initiated against the Contractor based on any legal authority pertaining to the protection of confidential information. The Contractor must provide with any notice a copy of the relevant administrative complaint, determination, or legal complaint.
- E. Failure of the Contractor to be in compliance with this provision, the Department's policies protecting confidential information, or federal and state legal authorities, inclusive of HIPAA, governing the protection of confidential information is cause for termination of this Contract by the Department.

18. BUSINESS ASSOCIATE

USE IF DETERMINED THAT THE CONTRACTOR REQUIRES A BUSINESS ASSOCIATE AGREEMENT

A. Purpose of this Provision:

The Department as the state entity responsible for the administration of services funded with federal Medicaid monies is under the authority of the federal Health

Insurance Portability and Accountability Act (HIPAA) deemed with respect to those services to be a health plan and therefore must comply with the various requirements of HIPAA inclusive of those pertaining to the confidentiality of personal health care information. In addition, other programs administered by the Department are also health plans or health care providers for purposes of the applicability of HIPAA. The Department has declared itself in its entirety to be a covered entity for purposes of implementation of HIPAA requirements and as such is subject to compliance in all its aspects with the HIPAA privacy requirements whenever certain types of personal health care information are present.

HIPAA requires that the Department enter into a business associate agreement with any business associate of the Department, as defined by the federal rules implementing the HIPAA privacy protections, when the business associate will have access to and use of Protected Health Information (PHI). The purpose of a business associate agreement is to provide protection via express contractual provisions for the PHI that a covered entity such as the Department may have to share for administrative purposes with, process through, or generate through another entity that is not directly subject to the requirements of HIPAA.

A business associate is a person or entity performing or assisting in the performance of a function in support of the administration of services by the Department that involves the use or disclosure of Protected Health Information (PHI).

The Department has determined that the Contractor is a business associate of the Department.

B. Definitions that Apply to this Section:

ALTERNATIVE 1

1. Terms used, but not otherwise defined, in this Section have the same meaning as those terms in the Privacy Rule (45 CFR Part 160, et. seq.) implementing HIPAA.

ALTERNATIVE 2

1. "Business Associate" means business associate as defined at 45 CFR 160.501.
2. "Covered Entity" means the Department.
3. "Individual" means "individual" as defined in 45 CFR § 164.501 and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

4. "Individually Identifiable Health Information" (IIHI) means, as defined in 45 CFR § 164.501, a subset of health information, including demographic information collected from a person that: 1) is created or received by a health care provider, a health plan, an employer or a health care clearinghouse; 2) relates to the past, present or future physical or mental health or condition of a person, the provision of health care to a person, or the past, present or future payment for the provision of health care to a person; and 3) identifies the person or with respect to which there is a reasonable basis to believe the information can be used to identify the person.
5. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information adopted in federal regulations at 45 CFR Part 160 and Part 164, Subparts A and E.
6. "Protected Health Information" (PHI) means "protected health information" as defined in 45 CFR § 164.501 that is created or received by the Business Associate from or on behalf of the Department. Protected health care information, with the exception of information appearing in certain educational records and of psychotherapy notes, is all individually identifiable health information occurring in any electronic, hard copy or other form.
7. "Required By Law" means "required by law" as defined in 45 CFR § 164.501 and is inclusive of the Privacy Rule and other federal and state laws and regulations affecting the confidentiality of health information.
8. "Secretary" means the Secretary of the federal Department of Health and Human Services or the Secretary's designee.

C. Obligations and Activities of the Contractor:

ALTERNATIVE 1

1. The _____ is a Business Associate of the Department and must comply, as required by this Contract, with the pertinent statutory and regulatory requirements of HIPAA, inclusive of those pertaining to privacy set forth in the Privacy Rule. The Contractor may only use or disclose PHI as may be permitted or required by this Contract or a Required by Law. The Contractor must use appropriate safeguards to prevent improper use or disclosure of PHI.

ALTERNATIVE 2

SUBSECTIONS 6 AND 9 ARE TO BE INCLUDED IF CONTRACTOR POSSESSES, IN PART OR IN WHOLE, ONE OF THE DEPARTMENT'S DESIGNATED RECORDS SETS. A DESIGNATED RECORD SET IS, AS DESIGNATED BY THE

DEPARTMENT, A FORMAL SET OF TREATMENT, ENROLLMENT AND BILLING RECORDS CONTAINING IIHI.

1. The _____ is a Business Associate of the Department and must comply with the requirements of HIPAA, inclusive of those pertaining to privacy set forth in the Privacy Rule. Contractor may only use or disclose PHI as may be permitted or required by this section or as required by Law.
2. The Contractor must ensure that any agent or subcontractor of the Contractor to whom the Contractor provides PHI that is governed by this Contract is subject by agreement to the same restrictions and conditions that apply through this Section to the Contractor with respect to such information.
3. The Contractor must use appropriate safeguards to prevent improper use or disclosure of PHI.
4. The Contractor must report to the Department any improper use or disclosure of PHI held by itself or its agents or subcontractors as soon as it becomes aware of the use or disclosure.
5. The Contractor must mitigate, to the extent practicable, any harmful effect that is known to the Contractor arising from an improper use or disclosure of PHI by the Contractor or its agents or subcontractors.
6. The Contractor, at the request of the Department and in the time and manner prescribed by the Department, must provide the Department or, as directed by the Department, an Individual with access to PHI in a Designated Record Set as may be required by 45 CFR §164.524.
7. The Contractor must document, in a manner prescribed by the Department, disclosures of PHI and denote information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
8. The Contractor must, in time and manner prescribed by the Department, provide to the Department or an Individual, information collected in accordance with subsection 7 in order to permit the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
9. The Contractor must, in the time and manner prescribed by the Department, make any amendment to PHI in a Designated Record Set that the Department directs pursuant to 45 CFR § 164.526.

10. The Contractor, in a time and manner prescribed by the Department or by the Secretary, must make policies, procedures, internal practices, books and records, relating to the use and disclosure of PHI received from the Department, or created or received by Contractor on behalf of the Department, available to the Department or to the Secretary of the federal Department of Health and Human Services for purposes of the Secretary determining the Department's compliance with the Privacy Rule and other pertinent legal authorities.

D. Uses and Disclosures of Protected Health Information (PHI) by the Contractor:

ALTERNATIVE 1 (General Language)

1. To the extent permissible under this Contract, the Privacy Rule and other applicable law or agreements, the Contractor may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Department for the following purposes provided such use or disclosure conforms to the minimum necessary policies and procedures of the Department.

ALTERNATIVE 2 (Refer to Section 2 of the Contract)

1. To the extent permissible under this Contract, the Privacy Rule and other applicable law or agreements, the Contractor may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Department as specified in Section ____ **(insert number of Purpose Section)**, provided such use or disclosure conforms with the minimum necessary policies and procedures of the Department.
2. The Contractor, in accordance with the pertinent provisions of 45 CFR § 164.502 and § 164.512, may disclose PHI to comply with the requirements of federal laws and regulations or to report violations of law to appropriate Federal and State authorities.

E. Permissive Uses and Disclosures of Protected Health Information (PHI):

THE SUBSECTIONS IN THIS SECTION MAY BE USED TO ALLOW FOR THE STATED TYPES OF PERMISSIBLE USES AND DISCLOSURES OF PHI. IF PERMISSIBLE USES AND DISCLOSURES PROVIDED IN SUBSECTIONS 1. OR 2. ARE NOT APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CONTRACT, THE SUBSECTION SHOULD NOT BE INCLUDED.

OTHER SUBSECTIONS ALLOWING FOR PERMISSIVE USES AND DISCLOSURES OF PHI MAY BE INCLUDED IF DEVELOPED AND APPROVED BY THE DEPARTMENT'S PRIVACY OFFICER AND LEGAL COUNSEL.

1. To the extent authorized under this Contract, the Privacy Rule and other applicable law or agreements, the Contractor may use PHI for the proper

management and administration of the Contractor's business or to carry out the legal responsibilities of the Contractor.

2. To the extent authorized under this Contract, the Privacy Rule and other applicable law or agreements, the Contractor may disclose PHI for the proper management and administration of the Contractor's business if such use is Required By Law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person and that the person will notify the Contractor of any instances of which the person is aware in which the confidentiality of the information has been breached.
3. Any use or disclosure of PHI by the Contractor or its agents and subcontractors for permissive purposes, must conform to the minimum necessary policies and procedures of the Department.

F. Notification by the Department:

1. The Department will notify the Contractor of any limitations in its notice of privacy practices of the Department in accordance with 45 CFR § 164.520, to the extent that such limitations may affect the Contractor's use or disclosure of PHI. A copy of the Department's Notice Of Privacy Practices (DPHHS Form No. HPS-400) is attached to this contract and incorporated herein in Appendix A.
2. The Department will notify the Contractor of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect the Contractor's use or disclosure of PHI.
3. The Department will notify the Contractor of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.

G. Term and Termination

1. Term Of Applicability:

The Contractor must comply with the requirements of this Section for the duration that the Contractor continues to possess PHI provided by the Department to the Contractor, or created or received by Contractor on behalf of the Department. Once the Contractor no longer possesses PHI due to its destruction, its transfer to another party designated by the Department, or its return to the Department, the Contractor is no longer bound by these requirements.

2. Termination for Cause:

If the Contractor fails to comply with any of the requirements of this section, the Department may, at its sole discretion:

- a. provide an opportunity for the Contractor to:
 - i. achieve compliance under terms specified by the Department; or
 - ii. terminate this Contract.
- b. immediately terminate this Contract if the Contractor's failing is substantive and compliance by the Contractor is not feasible or expected; or
- c. report the violation to the Secretary, if neither compliance nor termination is feasible.

3. Effect Of Termination:

- a. Except as provided in paragraph (ii) of this subsection, upon termination of this contract, for any reason, the Contractor must, as directed by the Department, destroy, transfer to another party designated by the Department, or return to the Department all PHI received from the Department, or created or received by the Contractor on behalf of the Department. Subcontractors or agents of the Contractor must comply as well with the Department's direction. The Contractor and its agents and subcontractors may not retain copies of the PHI.
- b. In the event that the Contractor determines that returning or destroying the PHI is infeasible, the Contractor must provide to the Department notification of the conditions that make return or destruction infeasible. Upon written agreement by the Department that return or destruction of PHI is infeasible, the Contractor must extend the protections of this Section to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such PHI.

H. Miscellaneous:

1. Regulatory References

A reference in this Section to a particular provision in the Privacy Rule means the provision of current effect and as amended.

2. Amendment

The Parties agree to take such action as is necessary to amend this Section from time to time as is necessary for the Department to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 or other applicable law.

3. Survival

The respective rights and obligations of Contractor under this Section, as provided for in subsection G. 3. "Effects Of Termination", shall survive the termination of this Section.

4. Interpretation

Any ambiguity in this Section shall be resolved to permit the Department to comply with the Privacy Rule and other applicable law.

19. DEPARTMENTAL GUIDANCE

THIS PROVISION MAY BE USED WHEN DESIRABLE.

The Contractor may request from the Department guidance in administrative and programmatic matters that are necessary to Contractor's performance. The Department may provide such guidance as it determines is appropriate. Guidance may include providing copies of regulations, statutes, standards and policies that are to be complied with under this contract. The Department may supply essential interpretations of such materials and this contract to assist with contract compliance by the Contractor. The Contractor is not relieved by a request for guidance of any obligation to meet the requirements of this contract. Legal services will not be provided by the Department to the Contractor in any matters relating to this contract.

20. RECIPIENT GRIEVANCES AND APPEALS

THIS PROVISION IS TO BE USED IN HUMAN SERVICES CONTRACTS THAT ARE FOR PROGRAMS THAT PROVIDE FOR GRIEVANCES AND APPEALS.

- A. The Contractor must inform applicants for and recipients of services provided through this contract of any right there might be to present grievances to the Contractor and the Department or to receive a fair hearing.
- B. If an appeal for a fair hearing is filed, the Contractor must appear, if requested by the Department, to present evidence in any hearing that may be held.

- C. The Contractor, as directed by the Department, must provide services in accordance with the decision in a fair hearing concerning services provided by the Contractor to a recipient of services.

21. PUBLICITY

THIS PROVISION IS TO BE USED WHEN THE CONTRACTOR MAY GENERATE PUBLICITY EXPRESSLY IN THE NAME OF THE DEPARTMENT'S PROGRAM OR PUBLICITY THAT IMPLICATES THE PROGRAM'S INVOLVEMENT.

- A. All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this contract prepared and released by the Contractor must include the statement:

"This project is funded (in part) under a contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department."

- B. As provided in Section 507 of H.R. 3424, appropriating monies for the Departments of Labor, Health and Human Services, and Education, as enacted through Division B of H.R. 3194, "The Consolidated Appropriations Act of 1999", Pub. L. No. 106-113, and as may be provided by congressional continuing resolutions or further budgetary enactments, all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this contract, funded in part or in whole with federally appropriated monies received through the programs of the Federal Departments of Health & Human Services, Education or Labor, must state the percentage and the monetary amount of the total program or project costs funded with federal monies and the percentage and the monetary amount of the total costs funded with nongovernmental monies.

CAN USE OR NOT

- C. All statements, press releases, and other documents or media pieces made available to the public describing the services provided with monies received through this contract must be reviewed and approved by the Department prior to use, publication or release.

22. CONTRACT PERFORMANCE SECURITY

THIS PROVISION IS TO BE USED WHEN A PERFORMANCE SECURITY IS REQUIRED OR IS DESIRABLE.

IF THE SERVICES WERE COMPETITIVELY PROCURED THROUGH A REQUEST FOR PROPOSALS, THE PERFORMANCE SECURITY REQUIREMENTS MUST HAVE BEEN SPECIFIED IN THE RFP.

The Contractor must maintain for the term of this contract, security in the form of insert type of security in the amount of insert amount of security, made payable to the State of Montana, Department of Public Health and Human Services. The performance security, provided to the Department in original form, will be returned to the Contractor after successful completion of this contract.

A PERFORMANCE SECURITY MUST TAKE ONE OF THE FOLLOWING FORMS: (1) A SUFFICIENT BOND WITH A LICENSED SURETY COMPANY AS SURETY; (2) LAWFUL MONEY OF THE UNITED STATES; (3) AN IRREVOCABLE LETTER OF CREDIT NOT TO EXCEED \$100,000; OR (4) A CASHIER'S CHECK, CERTIFIED CHECK, BANK MONEY ORDER, CERTIFICATE OF DEPOSIT, MONEY MARKET CERTIFICATE, OR BANK DRAFT THAT IS DRAWN OR ISSUED BY A FEDERALLY CHARTERED OR STATE CHARTERED BANK OR SAVINGS AND LOAN ASSOCIATION THAT IS INSURED BY OR FOR WHICH INSURANCE IS ADMINISTERED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THAT IS DRAWN AND ISSUED BY A CREDIT UNION INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND. THE PERFORMANCE SECURITY MUST BE IN ORIGINAL FORM; FAX OR PHOTOCOPIES ARE NOT ACCEPTABLE.

23. PROPERTY

THIS PROVISION MUST BE USED WHEN THE FUNDING FOR THE CONTRACT INCLUDES FEDERAL MONIES. THIS PROVISION MAY BE USED IN CONTRACTS FUNDED WITH ONLY STATE MONIES.

- A. For purposes of this provision the following definitions based on the pertinent federal regulations apply:

"Equipment" means tangible nonexpendable personal property, including exempt property, charged directly to the contract having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit unless lower limits are otherwise established.

"Intangible property" means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other instruments of property ownership, whether considered tangible or intangible.

"Personal property" means property of any kind of property except real property. It may be tangible, having physical existence, such as equipment and supplies, or intangible, having no physical existence, such as data, copyrights, patents or securities.

"Property" means, unless otherwise stated, real property, equipment, and intangible property.

"Real property" means land, including land improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment.

- B. Property to be used for the purposes of carrying out the duties and responsibilities provided for in this contract may be purchased with funds from this contract only if authorized by the Department through the terms of this contract.
- C. Property purchased with federal funding must be purchased, managed and disposed of in accordance with the pertinent provisions at 74 CFR §§ 74.32, 74.34, 74.35, 74.36, and 74.37 and 92 CFR §§ 92.31, 92.32, 92.33 and 92.34.
- D. At such time as the Contractor no longer contracts to deliver services to the Department or as directed by the Department during the term of the contract, the Contractor agrees to deliver, as may be required by law or as may be directed by the Department, title to and possession of any property purchased with contractual monies to the Department or to any entity designated by the Department.
- E. All patent and other legal rights in and to inventions arising out of activities assisted by funds from this contract must be available, in accordance with 37 CFR Part 401 and any other applicable legal authority, to the public for royalty-free and nonexclusive licensing. The Contractor must notify the Department promptly in writing of any invention conceived or actually reduced to practice in the course of performance of this contract.
- F. The Department and any federal agency from which funds for this contract are derived have, in accordance with 45 CFR § 74.36 and 45 CFR § 92.34, a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Department and agency purposes any written, audio or video material developed under this contract.

24. ACCESS TO PREMISES

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing those duties. All inspection, monitoring and

evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

25. PENALTIES

THIS PROVISION MAY BE USED IN CERTAIN CONTRACTS OR CLASSES OF CONTRACTS WHEN IT IS APPROPRIATE TO USE PENALTIES AS A PUNITIVE MEASURE TO PREVENT AND ENCOURAGE CORRECTION OF FAILURES IN PERFORMANCE.

The Department may impose the following penalties upon the Contractor for failure to perform in whole or part the duties and responsibilities provided for in the contract:

insert types of failures with consummate penalties

THE PENALTIES MUST BE TAILORED FOR THE CIRCUMSTANCES OF THE CONTRACT. CONSIDERATION SHOULD BE GIVEN TO DESIGNATING A CERTAIN SUM OR PERCENT OF THE CONSIDERATION TO BE HELD BY THE DEPARTMENT UNTIL COMPLETION OF PERFORMANCE. FOR EXAMPLE 10% OF THE CONSIDERATION COULD BE HELD PENDING COMPLETION OF PERFORMANCE. THAT CONDITION COULD BE USED IN LIEU OF A PENALTY SECTION IN THE "PENALTIES AND TERMINATION" PROVISION OR COULD BE USED IN CONJUNCTION WITH THE "PENALTIES AND TERMINATION" PROVISION. IF IT IS USED IN CONJUNCTION, THEY SHOULD BE COORDINATED IN TEXT.

26. CONTRACT TERMINATION

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

- A. The Department may immediately terminate the whole or any part of this contract for failure to perform the contract in accordance with the terms of the contract and other governing authorities.
 - 1. If there is no exigency or risk of harm to persons from continued performance, the Department, in its discretion, may impose penalties and/or provide notice to the Contractor of the failure to perform and allow the Contractor 30 days during which to cure the failure.
 - 2. Failure to perform includes, but is not limited to, failure to:
 - a. perform the services within the time limits specified in this contract;
 - b. perform any of the requirements of this contract;

- c. perform its contractual duties or responsibilities in accordance with the terms of the contract or any other authority, including statute, rules, or policy that govern the standards for performance; or
- d. comply with any law, regulation or licensure and certification requirement.

THIS SECTION NEED NOT BE USED IF EITHER ONE OF THE TERMINATION WITHOUT CAUSE SECTIONS IS USED.

- B. The Department may terminate the whole or any part of this contract when federal or state funding for this contract becomes unavailable for any reason. The Department must give notice to the Contractor at least thirty (30) days prior to the effective date of termination.

Alternative 1. (Note: pick if 30 days or something else)

- C. Either party may terminate this contract without cause. The party terminating this contract must give notice of termination to the other party at least _____ thirty (____)(30) days prior to the effective date of termination.

THIS SECTION SHOULD NOT BE USED IF THE PENALTIES PROVISION IS USED. IT IS RECOMMENDED THAT THE NOTICE PERIOD STATED IN THIS SECTION BE SET AT 30 OR 60 DAYS. THE CIRCUMSTANCES OF THE SERVICE TO BE PROVIDED SHOULD BE CONSIDERED IN SETTING A NOTICE PERIOD.

D - TO BE USED WHEN IT IS DESIRABLE FOR ONLY THE DEPARTMENT TO HAVE THE RIGHT TO TERMINATE THE CONTRACT WITHOUT CAUSE.

- D. The Department may terminate this contract without cause. The Department must give notice of termination to the Contractor at least _____ thirty (____) (30) days prior to the effective date of termination.

In all

- A. Notice of termination must be given in writing.
- B. Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.
- C. Upon contract termination or non-renewal of this contract, the Contractor must allow the Department, its agents and representatives full access to the Contractor's facilities and records to arrange the orderly transfer of the contracted activities.

27. LIAISON AND SERVICE OF NOTICES

THIS PROVISION IS TO BE USED IN ALL CONTRACTS.

- A. Insert name along with telephone number/fax number, and e-mail address)
_____, Phone: __, Fax: __, E-Mail: __, is the liaison for the Department.

Insert name along with telephone number/fax number, and e-mail address)
_____, Phone: __, Fax: __, E-Mail: __, is the liaison for the Contractor.

These persons serve as the primary contacts between the parties regarding the performance of this contract.

- B. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this contract.

28. CHOICE OF LAW, REMEDIES AND VENUE

THIS PROVISION IS TO BE USED IN ALL CONTRACTS -- IF A TRIBE, SEE BELOW.

- A. This contract is governed by the applicable laws of the State of Montana.
- B. Any remedies provided by this contract are not exclusive and are in addition to any other remedies provided by law.
- C. In the event of litigation concerning this contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.
- D. In the event of a contractual dispute, the Contractor agrees to continue performance under this contract unless the Department explicitly waives performance in writing.

TRIBAL -- IF NOT A TRIBE, DELETE E - G.

- E. The Parties agree that this contract shall be governed and interpreted according to federal laws and regulations and any applicable State of Montana laws and regulations and applicable Tribal laws and regulations. In the event of a dispute arising under this contract, jurisdiction will be in a court of competent jurisdiction.
- F. Any remedies provided by this contract are not exclusive and are in addition to any other remedies provided by law.

- G. In the event of a contractual dispute, the Contractor agrees to continue performance under this contract unless the Department explicitly waives performance in writing.

29. SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT

- A. This contract consists of the Contract Table of Contents and the contract provisions on 25 numbered pages, Appendix A, Requirements and Assurances and HIPAA Requirements Forms; and **Insert listing of other attachments**. This is the entire contract between the parties.

DOCUMENTS AND OTHER MATERIALS THAT GOVERN PERFORMANCE SUCH AS AN RFP, A SUBMITTED PROPOSAL, DEMONSTRATION VIDEOS, AND FEDERAL GRANT PROPOSALS, MUST BE INCLUDED AS ATTACHMENTS. IN ADDITION, IT IS NECESSARY TO HAVE THE DEPARTMENT'S CERTIFICATION OF COMPLIANCE FORM, SIGNED BY THE CONTRACTOR, AS AN ATTACHMENT TO ALL CONTRACTS AND, WHEN FEDERAL FUNDS ARE INVOLVED, TO HAVE THE FEDERAL OMB 424B (REV. 7-97) FORM, KNOWN AS "ASSURANCES - NON-CONSTRUCTION PROGRAMS" ISSUED BY THE FEDERAL OFFICE OF MANAGEMENT OF THE BUDGET (OMB), SIGNED BY THE CONTRACTOR, AS AN ATTACHMENT.

- B. No statements, promises, or inducements made by either party or their agents are valid or binding if not contained herein.
- C. The headings to the sections of this contract are for convenience of reference and do not modify, the terms and language of the provisions to which they are headings.
- D. No contractual provisions from a prior contract of the parties are valid or binding in this contractual agreement.
- E. This contract, except as may be otherwise provided by the terms of this contract, may not be enlarged, modified or altered except by written amendment signed by the parties to this contract.
- F. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract along with any attachments prepared by the Department, inclusive of request for proposal, if any, govern over the Contractor's proposal if any.
- G. If any provision of this contract is determined by a court of law to be invalid legally, all other provisions of this contract remain in effect and are valid and binding on the parties.
- H. If any provision of this contract, per se or as applied, is determined by the Department to be in conflict with any federal or state law or regulation then the

provision is inoperative to the extent that the Department determines it is in conflict with that authority and the provision is to be considered modified to the extent the Department determines necessary to conform with that authority.

- I. Waiver of any default, breach or failure to perform under this contract is not deemed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or failure to perform is not construed to be a modification of the terms of this contract unless reduced to writing as an amendment to this contract.

-- SIGN-OFF

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: _____ Date _____
_____, Administrator
Division

(Contractor)

By: _____ Date _____

Typed/Printed Name as _____
Title

Address

City, State Zip

Phone Number

Federal I.D. Number

Fax Number

E-Mail Address

IF THIS IS AN RFP FORMULATED THROUGH DOFA, SPB, THEY MUST SIGN OFF IN APPROVAL OF THIS CONTRACT BEFORE IT IS MAILED OUT TO CONTRACTOR. MAKE SURE YOU COMPARE ALL LANGUAGE TO WHAT WAS SOLICITED IN THE RFP -- THERE MUST BE NO CONFLICTING LANGUAGE. IF THERE IS, YOU MUST GO THROUGH DOFA, SPB, FOR APPROVAL AND THEN MUST PUT IN SUPERCESSION INFORMATION IN THE CONTRACT REPLACING THE LANGUAGE USED IN THE RFP.

APPROVALS:

Approved for Legal Content By

Date _____

Approved to Form, State Procurement Bureau

Date _____

APPENDIX A

REQUIREMENTS AND ASSURANCES

AND HIPAA REQUIREMENTS

FORMS

VARIABLE -- (COPY ON FILE WITH THE DEPARTMENT)

ATTACHMENT A

(IF NEEDED)